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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,769	07/23/2003	Brian G. Hoover	32365-1001	7825

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PEACOCK MYERS, P.C.
201 THIRD STREET, N.W.
SUITE 1340
ALBUQUERQUE, NM 87102

EXAMINER

VARGOT, MATHIEU D

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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05/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/625,769	Applicant(s) HOOVER, BRIAN G.	
	Examiner Mathieu D. Vargot	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,8-10,15,16,34,42,45,46,48-50 and 52-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,8-10,15,34,42,45,46,48-50 and 52-57 is/are rejected.
- 7) ☒ Claim(s) 16 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 16 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 46, 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele et al (see col. 3, lines 47-60; col. 4, lines 5-31 and col. 4, lines 32-48, **particularly lines 38-48**) in view of Kumakura et al.

Steele et al discloses forming a corneal implant by providing a polymer film and forming pores in the film by methods known to those of ordinary skill in the art including the use of a laser (see col. 3, lines 47-60), the pores being large enough in the skirt portion so that corneal tissue ingrowth occurs to assist anchorage of the implant to the eye—see col. 4, lines 38-48. Essentially, the primary reference fails to teach the instant track forming and etching to make the pores. As already noted, Kumakura et al discloses these steps in making a porous contact lens. It is submitted that one of ordinary skill in this art would have knowledge of various methods used to make holes in ocular devices and that contact lens methods would have been reasonably expected to work on corneal implants given the similarity of the materials used. Since that the primary reference teaches using a laser, there is every reason to believe that irradiation and etching as taught in Kumakura et al would have been a clear alternative. Also, it is

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within the skill level of the art to pick and choose various methods which are known to be equivalents, and laser processing and irradiation plus etching are known equivalents in the art as surface shaping methods.

3. Claims 48, 45, 8-10 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele et al (see col. 3, lines 47-60; col. 4, lines 5-31 and col. 4, lines 32-48, particularly lines 38-48) in view of Kumakura et al and Freeman et al. Steele et al and Kumakura et al are applied for reasons of record as noted in paragraph 1, supra, with Freeman et al being applied for reasons of record as set forth in the previous action.

4. Claims 52 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele et al (see col. 3, lines 47-60; col. 4, lines 5-31 and col. 4, lines 32-48, particularly lines 38-48) in view of Kumakura et al and Japanese documents 3-057,629 and 58-153326.

Steele et al and Kumakura et al are applied for reasons of record as noted in paragraph 1, supra, with Japanese documents -629 and -326 being applied for reasons of record as set forth in the previous action.

5. Claims 49, 50, 53-57 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele et al (see col. 3, lines 47-60; col. 4, lines 5-31 and col. 4, lines 32-48, particularly lines 38-48) in view of Kumakura et al and Freeman et al and further in view of Japanese documents 3-057,629 and 58-153326 for reasons of record.

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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In view of applicant's amendment requiring the optical device to be surgically inserted into the cornea, new art has been found —ie, Steele et al—that is closer in spirit to the instant invention. While indeed it would not be obvious to modify Kumakura et al to widen pores in the outer peripheral region to allow for corneal ingrowth, Steele et al discloses exactly that. It is submitted that the general method disclosed in Kumakura et al would still be applicable in making pores in a corneal implant, while Steele et al teaches that these would be larger than the pores in the optic area. See column 4, lines 5-48 of Steele et al. The additional references are applied for reasons of record and are submitted to be fairly applied against the instant claims. Concerning Japanese —629, it is submitted that methods used on IOLs would have been reasonably expected to work on corneal implants. Japanese —326, while admittedly not directed to forming an optical product, is merely being applied to teach the use of a mask in the ion implantation. In re Antle, 170 USPQ 285, requires us to presume that the inventor would have the ability to select and utilize knowledge from other arts reasonably pertinent to his particular problem, and clearly Japanese —326 is reasonably pertinent to the instant ion implantation. Comments directed to Freeman producing residue are not understood, since the reference clearly teaches against this—see the abstract, lines 6-7 and other relevant portions of the specification. Comments directed to instant claims 16 and 58 are persuasive, and these claims would be allowable if presented in independent form.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
May 26, 2007


Mathieu D. Vargot
Primary Examiner
Art Unit 1732

5/26/07